158-601

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 893.

CHARLES POLLOCK, APPELLANT,

vs.

THE FARMERS' LOAN AND TRUST COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 28, 1895.

(15,777.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 28, 1895.

1 In the Circuit Court of the United States, Southern District of New York.

CHARLES POLLOCK, Complainant,
versus
THE FARMERS' LOAN & TRUST COMPANY, SAMUEL Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants. } In Equity.

Bill of Complaint.

Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York city.

Joseph H. Choate, Clarence A. Seward, William D. Guthrie, Charles Steele, David Willcox, of counsel.

U. S. circuit court. Filed Jan. 19, 1895. John A. Shields, clerk.

2 To the judges of the circuit court of the United States for the southern district of New York, sitting in equity:

Charles Pollock, a citizen of the State of Massachusetts, and a resident of the city of Boston in said State, brings this his bill of complaint, in behalf of himself and all other stockholders who are similarly situated, and who shall be entitled to avail themselves of the benefit of this suit, against the Farmers' Loan & Trust Company, a corporation created and existing under and by virtue of the laws of the State of New York, located and having its principal office for the transaction of business in the city of New York, in the southern district of New York; Samuel Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge and Charles A. Peabody, Jr., all citizens of the State of New York and residents of the southern district of said State, and Henry Hentz and Rosewell G. Rolston, citizens of the State of New York and residents of the eastern district of said State, and Robert F. Ballantine and James Neilson, citizens of the State of New Jersey and residents of the district of New Jersey,

and Franklin D. Locke, a citizen of the State of New York
3 and a resident of the northern district thereof, and thereupon your orator complains and says as follows:

First. Your orator shows that the defendant, The Farmers' Loan & Trust Company, is a corporation duly organized and existing under and by virtue of the provisions of an act of the legislature of the State of New York, entitled "An act to incorporate the Farmers' Fire Insurance and Loan Company," passed February 28th, 1822, as amended by certain acts of the legislature of the State of New York, namely: An act entitled "An act relative to the Farmers' Fire Insurance and Loan Company," passed April 17th, 1822; an act entitled "An act to alter the name of the Farmers' Fire Insurance and Loan Company and to classify its directors," passed April 30, 1836; an act entitled "An act to confirm certain securities and conveyances of land," passed March 28th, 1850; an act entitled "An act to amend an act entitled 'An act relative to the Farmers' Fire Insurance and Loan Company,'" passed on or about the 30th day of March, 1852; an act entitled "An act relative to the Farmers' Loan and Trust Company," passed April 30th, 1875 (being chapter 217 of the Laws of 1875); an act entitled "An act to amend chapter 217 of the Laws of 1875, and entitled 'An act relative to the Farmers' Loan and Trust Company,'" passed May 13th, 1880 (being chapter 277 of the Laws of 1880); and an act entitled "An act to amend chapter 277 of the Laws of 1880, entitled 'An act to amend chapter 217 of the Laws of 1875, entitled "An act relative to the Farmers' Loan and Trust Company,"'" passed May 24th, 1890 (being chapter 433 of the Laws of 1890). Reference is prayed to each and all of said acts for the powers and duties of the said defendant trust com-
4 pany and of its directors. The capital stock of said corporation now consists and for over ten years last past has consisted of the sum of one million dollars ($1,000,000), divided into forty thousand shares of the par value of twenty-five dollars ($25) each, and, as your orator is informed and verily believes, the capital stock, surplus and accumulated profits of said corporation now exceed the sum of five million dollars ($5,000,000).

Second. Your orator further shows that the said defendant trust company was and is authorized in and by the statutes above mentioned to invest its assets in public stocks and bonds of the United States or any individual State, or in the stock and bonds of any incorporated city or county, or in such real or personal securities as the company might deem proper, and was and is also authorized and empowered to take, accept and execute all such trusts of every description as might be committed to said company by any person or persons or any corporation by grant, assignment, devise, or bequest, or which might be committed or transferred to or vested in said company by order of the supreme court of the State of New York, or by a surrogate or any of the courts of record of said State, and to receive and take any real estate which might be the subject of any such trust.

Third. Your orator further shows, on information and belief, that

the property and assets of said defendant trust company now amount to more than the sum of five million dollars ($5,000,000), as aforesaid, and that at least $1,000,000 thereof is invested in real estate owned by said company in fee, and at least $2,000,000 thereof in bonds of the city of New York, and at least $1,000,000 thereof in the bonds and stocks of other corporations in the United States.

5 Fourth. Your orator further shows that the net profits or income of the defendant trust company during the year ending December 31st, 1894, amounted, to the best of your orator's knowledge, information and belief, to more than the sum of three hundred thousand dollars ($300,000) above its actual operating and business expenses, including therein losses and interest on bonded and other indebtedness; that the real estate above referred to belonging to the defendant trust company consists of numerous parcels of land situated in the State of New York; that said trust company derives therefrom income and rents of about $50,000 per annum, after paying or deducting all national, State, county, school and municipal taxes, and that said company derives an income or profit of about $60,000 from its investments in said municipal bonds.

Fifth. Your orator further shows, on information and belief, that under and by virtue of the powers conferred upon said defendant trust company, it has from time to time taken, accepted and executed, and at all the times referred to in this bill of complaint, has held and been executing, and still holds and is executing, numerous trusts committed to said trust company by numerous persons, copartnerships, unincorporated associations and corporations, by grant, assignment, devise and bequest, and by orders of various courts, and that said trust company now holds as trustee for many minors, individuals, copartnerships, associations and corporations too numerous to mention, resident in the United States and elsewhere, many parcels of real estate exceeding one hundred (100) in number, situate in the various States of the United States, and amounting in the aggregate to a value in excess of $5,000,000, the rents and income of

6 which real estate collected, received and held by said defendant in its numerous fiduciary capacities annually exceed the sum of two hundred thousand dollars.

Sixth. Your orator further shows that in and by said acts of the legislature of the State of New York above referred to, it is, among other things, provided that the stock, property, affairs and concerns of said defendant trust company should be managed and wholly conducted by twenty-seven directors, that such directors should hold office until others were chosen in their stead, and that such directors should be stockholders of the company in their own right, and likewise citizens of the United States. As your orator is informed and verily believes, the defendants above named, Samuel Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby,

Cleveland H. Dodge and Charles A. Peabody, Jr., are citizens of the State of New York and residents and inhabitants of the southern district of said State, and Henry Hentz and Rosewell G. Rolston are citizens of the State of New York and residents and inhabitants of the eastern district of said State, and Robert F. Ballantine and James Neilson are citizens of the State of New Jersey and residents and inhabitants of the district of New Jersey, and Franklin D. Locke is a citizen of the State of New York and a resident and inhabitant of the northern district thereof, and said defendants are the
7 directors of the said defendant trust company, duly elected as such, and are now acting in that capacity and managing and conducting all and singular the stock, property, affairs and concerns of said defendant trust company.

Seventh. Your orator further shows that he is a citizen of the State of Massachusetts and a resident of the city of Boston in said State; that he became the owner and registered holder of ten shares of the capital stock in said defendant trust company on or about the 20th day of May, 1892, and that he ever since has been and still is a stockholder therein, owning and holding in his own right said ten shares of its capital stock, the value of which ten shares exceeds the sum of $5,000. The capital stock of said trust company is divided among a large number of different persons, who, as such stockholders, constitute a large body, and this suit is for an object common to them all. Many of such stockholders are not citizens or residents of the United States. Your orator, therefore, brings this suit in his own name and in his own behalf as a stockholder in said trust company, and also as a representative and on behalf of such of the other stockholders similarly situated and interested as may choose to intervene and become parties hereto.

Eighth. Your orator further shows that, as he is informed and verily believes, the defendant trust company and a majority of its directors who are managing and conducting its stocks, property, affairs and concerns as aforesaid, claim and assert that under and by virtue of the alleged authority of the provisions of an act of Congress of the United States, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes,"
8 passed August 15th, 1894, the trust company is liable and that they intend to pay to the Federal Government before the first day of July, 1895, a tax of two per centum on the net profits or income of said defendant trust company for the calendar year ending December 31st, 1894, above actual operating and business expenses, including the income derived from the said real estate and the said bonds of the city of New York; and that the said directors claim and assert that a similar tax must be paid upon the amount of the income, gains and profits in excess of four thousand dollars of all minors and others for whom the said trust company is acting in a fiduciary capacity.

Ninth. Your orator further shows that, as he is informed and verily believes, in alleged compliance with the requirements of the act of Congress aforesaid, the defendant trust company and its said directors have avowed their intention and propose voluntarily to

make and file with the collector of internal revenue of the second district of the city of New York, prior to the 1st day of March, 1895, a list, return, or statement, showing the amount of net profits or income received by said trust company during the calendar year 1894, as aforesaid, and have likewise avowed their intention and propose voluntarily to make and render a list or return to the said collector of internal revenue, prior to said date, of the amount of the income, gains and profits of all minors and other persons having incomes in excess of three thousand five hundred dollars for whom the said trust company is acting in a fiduciary capacity.

Tenth. Your orator avers that the provisions of said income tax, incorporated in said act of Congress, as aforesaid, are unconstitutional, null and void in that the said income tax is a direct tax in respect of the real estate held and owned by the defendant trust company in its own right and in its fiduciary capacities as aforesaid, by being imposed upon the rents, issues and profits of said real estate, and is likewise a direct tax in respect of its personal property and the personal property held by it for others for whom it acts in its fiduciary capacities aforesaid, which direct taxes are not in and by said act apportioned among the several States, as required by section 2 of article I of the Constitution of the United States.

Eleventh. Your orator further avers that if the said income tax, so incorporated in said act of Congress, as aforesaid, be held not to be a direct tax, then its provisions are nevertheless unconstitutional, null and void in that they are not uniform throughout the United States, as required in and by section 8 of article I of the Constitution of the United States.

Twelfth. Your orator further avers that the said income tax is not uniform as to property, class or subject in that, as he is informed and verily believes, the net profits or income above actual operating and business expenses of many corporations in the United States too numerous to mention, organized under the laws of the various States, amount to less than four thousand dollars per annum, and did not equal said sum during the whole of the last calendar year, namely, 1894, and that said tax is imposed on such corporations although individuals carrying on and transacting similar business under like conditions, and having like property, values, quantities, and income, are exempted by said act from the payment of said tax.

Your orator further avers that the said income tax is not uniform in that, as he is informed and verily believes, numerous holders of said shares of stock in the defendant trust company and other corporations have annual incomes of less than $4,000, including the interest and dividends received upon shares therein, and during said calendar year actually received gains, profits and income amounting in the aggregate to less than $4,000, and that if the defendant trust company and other corporations shall pay the said tax to the collector of internal revenue as aforesaid, the effect of such payment will be to lessen and diminish the dividends of such shareholders, and to lessen and diminish the value of their shares, and

compel such holders, having incomes less than $4,000 per annum, to bear and pay said tax, although other parties of the same class similarly situated in the United States, whose incomes are less than $4,000 per annum, received or resulting from investments in other property of like values and quantity, are exempted by said act from the payment of said tax.

Your orator further avers that the said income tax is not uniform in that, as he is informed and verily belives, it is imposed upon only about two per centum of the population of the United States, namely, those who have incomes in excess of $4,000 per annum, and that the remaining population, namely, ninety-eight per centum thereof, are by said act exempted from the payment of said tax although they hold the greater portion of all property, real and personal, in the United States, as will appear by reference to the reports and returns of the Superintendent of Census of the United States, duly made and published under the provisions of the
11 Revised Statutes of the United States in such case made and provided.

Your orator further avers that the said income tax is not uniform in that it imposes a tax of two per centum upon all money and the value of all personal property acquired by gift or inheritance, while no similar tax is imposed by said act upon real estate of like values and quantities acquired under similar conditions by either gift or inheritance.

Your orator further avers that the said income tax is not uniform in that the principal of every estate consisting of personal property which passess by gift or inheritance to any person or persons during the pendency of said act is taxed at the rate of two per centum upon the amount of such principal, although other like estates which do not pass by gift or inheritance until after such limited period or which during said period pass by gift or inheritance to corporations are not so taxed.

Your orator further avers that the said income tax is not uniform in that it is not laid at the same rate or percentage upon all incomes derived from like property, values and quantities, but varies according as the property, real or personal, from which the incomes, gains, and profits are derived belongs to an individual, or to more than one individual, or to members of one family.

Your orator further avers that the said income tax is not uniform in that by its provisions the salaries due to State, county or municipal officers are exempted from the payment of the income tax; all corporations or associations for charitable, religious, educational or beneficial purposes, and all building and loan associations which loan to their shareholders only and very many insurance companies and savings institutions, as therein specified, are exempted
12 from the payment of the income tax; and the income from bonds of the United States, the principal and interest of which are by the law of their issuance exempt from Federal taxation, is also exempted from the payment of said income tax.

And your orator further avers that the said income tax is not uniform as required by section 8 of article I of the Constitution of

the United States in many other respects, besides those specifically mentioned in this bill of complaint, and that its provisions are, therefore, unconstitutional, null and void.

Thirteenth. Your orator further avers that the said provisions of said income tax, incorporated in said act of Congress as aforesaid, are likewise unconstitutional, null and void, in that they impose a tax upon income not taxable under the Constitution of the United States and likewise income derived from the stocks and bonds of the States of the United States of America and counties and municipalities therein, which stocks and bonds are among the means and instrumentalities employed for carrying on their respective governments, and are not proper subjects of the taxing power of Congress, and which States and their counties and municipalities are independent of the general Government of the United States, and the respective stocks or bonds of which are, together with the power of the States to borrow in any form, exempt from Federal taxation.

Your orator further shows that, as he is informed and verily believes, the stocks and bonds of the States and counties and municipalities of the United States which are thus exempted from Federal taxation under the Constitution of the United States, amount in the aggregate to about the sum of $1,243,268,000, on which the
13 income, interest, or charge amounts to over the sum of $65,541,000 per annum, as likewise will appear by reference to said reports and returns of the Superintendent of Census, and that it was the intention of Congress and is essential and necessary to accomplish the purposes and general scope of said legislation to lay and collect such tax upon income derived from State, county and municipal stocks and bonds.

Fourteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are unconstitutional, null and void in that they impair property rights vested prior to the passage of said act, and in that they impose a tax of two per centum upon incomes of persons, associations and corporations which accrued prior to August 28th, 1894, the date upon which said act became a law, as well as upon property received by gift or inheritance prior to said date.

Fifteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are unconstitutional, null and void in that all persons or corporations thereby taxed may, under and by virtue of its terms and provisions, be deprived of their property without due process of law in violation of article V of the Constitution of the United States.

Sixteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are unconstitutional, null and void, in that all persons or corporations thereby taxed may be compelled to produce and disclose their private books and papers in order to make them liable for a penalty or to forfeit their property, in violation of articles IV and V of the Constitution of the United States.

14 Seventeenth. Your orator further shows that this suit is not a collusive one to confer on a court of the United States

jurisdiction of a case of which it would not otherwise have cognizance, and that he has duly requested the defendant trust company and its directors and each of them in writing to omit and refuse to pay and to refrain from paying said income tax, and to contest the constitutionality of said act, and to refrain from voluntarily making lists, returns and statements on its own behalf and on behalf of the minors and other persons for whom it is acting in its fiduciary capacities aforesaid, and to apply to a court of competent jurisdiction to determine its liability under said act, and that a copy of said request is hereto annexed as "Exhibit A," and made a part of this bill of complaint; but that said defendant trust company and a majority of its directors, after a meeting of the directors at which the matter and said request "Exhibit A" were formally laid before them for action, have, as your orator is informed and verily believes, refused and still refuse and intend omitting to comply with your orator's demand, and, as your orator is informed and verily believes, have resolved and determined and intend to comply with all and singular the provisions of said act of Congress, and to pay said tax upon all its net profits or income as aforesaid, including therein its rents from real estate and its income from municipal bonds. A copy of the refusal of said defendant trust company is hereto annexed as "Exhibit B" to this complaint.

Eighteenth. Your orator further shows that if the defendant and its directors, as they propose and have declared their intention to do, pay said tax out of the gains, income and profits of the defendant trust company or out of the gains, income and profits of the property held by it in its fiduciary capacities, they will thereby diminish the assets of said trust company, and lessen the dividends thereon and the value of all its shares.

Nineteenth. Your orator further shows that the voluntary compliance with the provisions of said income tax, so incorporated in said act of Congress aforesaid, will expose the defendant trust company to a multiplicity of suits not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and other persons for whom it acts in its several fiduciary capacities, and that such numerous suits will work irreparable injury to the business of the company and involve it in great and irreparable damage, and subject the trust company to liability to the beneficiaries aforesaid—all to the irreparable damage of your orator and all its shareholders.

Twentieth. Your orator further shows that this is a suit of a civil nature in equity; that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and arises under the Constitution or laws of the United States, and that this is furthermore a controversy between citizens of different States.

All of which actings, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

Wherefore, and in consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable:

Your orator prays:

16 I. That it may be adjudged and decreed that the said provisions known as the income tax incorporated in said act of Congress passed August 15th, 1894, are unconstitutional, null and void.

II. That the defendants be restrained from voluntarily complying with the provisions of said act and making the lists, returns and statements above referred to or paying the tax aforesaid.

III. And that your orator may have such other or further or different relief in the premises as to a court of equity may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein and hereby prayed, and may full, true, direct and perfect answer make to the best and utmost of their knowledge, remembrance, information and belief, the said The Farmers' Loan and Trust Company, under its corporate seal, and the said individual defendants, not under oath—an answer under oath being hereby expressly waived—to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated, paragraph by paragraph, and they were specially interrogated thereunto: may it please your honors to grant unto your orator a *subpœna ad respondendum* issuing out of and under the seal of this honorable court, to be directed to the said defendants, The Farmers' Loan and Trust Company, Samuel Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd,

17 Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson and Franklin D. Locke, commanding them and each of them on a certain day and under a certain penalty to be therein inserted, to appear before your honors in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises; and, further, to perform and abide by such further order and decree as to your honors shall seem meet; and also a writ of provisional and a writ of perpetual injunction to the same purport, tenor and effect as is hereinbefore set forth and prayed.

And your orator, as in duty bound, will ever pray, &c.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant, 29 Nassau Street, New York City.

JOSEPH H. CHOATE,
CLARENCE A. SEWARD,
WILLIAM D. GUTHRIE,
CHARLES STEELE,
DAVID WILLCOX,
Of Counsel.

2—893

18 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

William D. Guthrie, being duly sworn, doth depose and say that he is one of the solicitors for the complainant Charles Pollock, named in the foregoing bill of complaint; that the reason why this verification is not made by said Pollock is that he is absent from the southern district of New York and in the State of Massachusetts; that deponent has read said bill and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. The sources of deponent's information and belief as to all matters therein not stated upon his knowledge are communications with the plaintiff through the Boston correspondents of deponent's firm, who have conferred with said Pollock; reports published by the defendant trust company and Exhibits A and B in the possession of deponent's firm.

WILLIAM D. GUTHRIE.

Subscribed and sworn to before me, this 19th day of January, 1895.

[NOTARIAL SEAL.] CARL A. DE GERSDORFF, *Notary Public, New York County* (99).

19 EXHIBIT A.

NEW YORK, *January* 5, 1895.

To Samuel Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, directors of the Farmers' Loan & Trust Company.

SIRS: I am a shareholder in the Farmers' Loan & Trust Company, and am informed that the company intends to voluntarily comply with the requirements of the provisions relating to income tax contained in the act of Congress of the United States entitled "An act to reduce taxation, and to provide revenue for the Government, and for other purposes," which became a law August 28th, 1894, and is known as the tariff act.

I claim that the provisions of said act of Congress in respect to income tax are unconstitutional. As a shareholder in said trust company I hereby protest against any action of the company and its directors in voluntarily complying with said income tax provisions, and I request that said trust company and its directors shall refrain from voluntarily complying with any of said pro-
20 visions, and from voluntarily paying the tax provided for therein, and from voluntarily making lists, returns, and

statements in its own behalf and in behalf of minors and other persons for whom it is acting in a fiduciary capacity. I further request that said company and its directors shall contest the constitutionality of said act and protect its shareholders and beneficiaries, and apply to a court of competent jurisdiction to determine its liability under the same, or take such steps as may be necessary to protect the rights of the trust company's shareholders and those for whom it acts in its numerous fiduciary capacities.

Very truly yours,

CHARLES POLLOCK,
By SEWARD, GUTHRIE,
MORAWETZ & STEELE,
His Attorneys.

EXHIBIT B.

The Farmers' Loan and Trust Company, 16, 18, 20, & 22 William St.

NEW YORK, *January 18th*, 1895.

Charles Pollock, Esq., c. o. Messrs. Seward, Guthrie, Morawetz & Steele, 31 Nassau street, city.

DEAR SIR: Referring to your circular letter of the 5th inst., addressed to the directors of this company, we have to say that the board of directors, at a meeting held this day, considered the matter, and we hand you herewith a certified copy of the resolution which they passed in relation to your request.

Yours very truly,

THE FARMERS' LOAN & TRUST CO.,
By E. S. MARSTON, *Sec'y.*

(Enc.)

21 (Enclosure referred to in foregoing letter:)

The Farmers' Loan and Trust Company, 16, 18, 20, and 22 William St.

NEW YORK, *January 18th*, 1895.

At a regular meeting of the board of directors of the Farmers' Loan and Trust Company, held this day, the following resolution was passed:

"Resolved, That the board of directors deem it inexpedient to comply with the demand of Mr. Pollock, on the ground that the failure to comply with the provisions of the income-tax law would subject the company to litigation with the United States, and the risk of incurring penalties, and of clouding the title to all the real estate held by it on its own behalf and in its fiduciary capacity."

I hereby certify that the foregoing is a true and correct copy of the resolutions approved by the board of directors of the Farmers' Loan and Trust Company.

EDWIN S. MARSTON, *Sec'y.* [CORPORATE SEAL.]

22 In the Circuit Court of the United States, Southern District of New York.

CHARLES POLLOCK, Complainant,
against
THE FARMERS' LOAN AND TRUST COMPANY, SAMUEL SLOAN, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants.

The Demurrer of the Farmers' Loan and Trust Company and the Other Defendants Above Named to the Complainant's Bill of Complaint Herein.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer show that said bill doth not contain any matter of equity whereon this court can ground any decree or give
23 to the complainant any relief against these defendants or any one or more of them, and that it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed by the said bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants separately and severally demur thereto and pray the judgment of this honorable court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

TURNER, MCCLURE & ROLSTON,
Solicitors for Defendants, 22 William Street, New York.

I, Herbert B. Turner, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

HERBERT B. TURNER.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

I, W. D. Searls, being duly sworn, depose and say that I am the vice-president of The Farmers' Loan and Trust Company, one of the defendants above named, and that the foregoing demurrer is not interposed for purposes of delay.

W. D. SEARLS.

Subscribed and sworn to before me this 23rd day of January, 1895.

C. A. SEARLS,
[SEAL.] *Notary Public, New York County*, 245.

24 [Endorsed:] Circuit court of the United States, southern district of New York. Charles Pollock *vs.* The Farmers' Loan and Trust Company *et al.* Demurrer. Turner, McClure & Rolston, solicitors for defendants, 22 William street, New York. U. S. circuit court. Filed Jan. 23, 1895. John A. Shields, clerk.

25 In the Circuit Court of the United States, Southern District of New York.

CHARLES POLLOCK, Complainant,
versus
THE FARMERS' LOAN & TRUST COMPANY, SAMUEL Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants. } In Equity.

You will please take notice that this cause will be brought to a hearing on bill and demurrer filed therein before Honorable William J. Wallace, circuit judge, on the 24th day of January, 1895, at eleven o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated New York, January 23rd, 1895.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant, 29 Nassau Street, New York City.

To Messrs. Turner, McClure & Rolston, solicitors for defendants, New York city.

26 [Endorsed:] United States circuit court, southern district of New York. Charles Pollock against The Farmers' Loan & Trust Company *et al.* Notice of hearing on bill and demurrer. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. Due and timely service of the within notice of hearing in the above-entitled suit is hereby admitted. Dated January 23, 1895. (S'g'd) Turner, McClure & Rolston, solicitors for defendants. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

27 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States post office and court-house building, in the city of New York, this 24th day of January, A. D. 1895.

Present: Honorable William J. Wallace, circuit judge.

CHARLES POLLOCK, Complainant,
versus
THE FARMERS' LOAN AND TRUST COMPANY, SAMUEL SLOAN, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants.

This cause having come on to be heard upon the bill and the demurrer thereto, and counsel having been heard in support of said demurrer and in opposition thereto, it is by the court now here—

Ordered and decreed that the said demurrer be sustained, and that the bill of complaint of the complainant above named be, and the same is hereby, dismissed with costs.

WM. J. WALLACE.

28 Thereupon the above-named complainant states that in this case the constitutionality of a law of the United States is drawn in question and in open court prays an appeal from said final decree direct to the Supreme Court of the United States pursuant to the statute in such case made and provided. It is therefore further—

Ordered that the said appeal be, and the same is hereby, allowed as prayed for in open court.

The said defendants then admitted in open court due notice of the said appeal and duly waived service of any citation thereon.

WM. J. WALLACE.

29 [Endorsed:] United States circuit court, southern district of New York. Charles Pollock against The Farmers' Loan & Trust Company *et al.* Final decree sustaining demurrer and allowance of appeal. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

30 Circuit Court of the United States, Southern District of New York.

CHARLES POLLOCK, Complainant, *versus* THE FARMERS' LOAN & TRUST COMPANY, SAMUEL Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants.	In Equity.

And now comes the complainant above named, by Seward, Guthrie, Morawetz & Steele, his solicitors, and, in connection with the complainant's petition of appeal from the final decree made and entered herein on the 24th day of January, 1895, dismissing the complainant's bill of complaint with costs, makes and files the following assignment of errors in pursuance of the statute and rule in such case made and provided:

I.

That the court erred in not holding that so much of the act of Congress of the United States entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," passed August 15, 1894, as relates to the levying and collec-
31 tion of a tax upon income, as specified in sections 27 to 37, both inclusive, were unconstitutional and void, in that such sections violate sections 2 and 8 of article I and articles IV and V of the Constitution of the United States.

II.

That the court erred in not granting to the complainant the relief prayed in and by his bill or any part thereof.

III.

That the court erred in sustaining the demurrer to said bill.

IV.

That the court erred in dismissing the said bill with costs.

Dated New York, January 24th, 1895.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant.

CLARENCE A. SEWARD, *Of Counsel.*

32 [Endorsed:] United States circuit court, southern district of New York. Charles Pollock against The Farmers' Loan & Trust Company *et al.* Assignment of errors. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

33 Circuit Court of the United States, Southern District of New York.

CHARLES POLLOCK, Complainant,
against
THE FARMERS' LOAN & TRUST COMPANY, SAMUEL Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, Defendants. } In Equity.

Know all men by these presents that we, Clarence A. Seward and William D. Guthrie, both of the city, county, and State of New York, are held and firmly bound unto the above-named defendants in the sum of five hundred dollars ($500), to be paid to the said defendants; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 24th day of January, in the year of our Lord 1895.

The condition of this obligation is such that whereas the said defendants above named have obtained a decree in the circuit
34 court of the United States for the southern district of New York, sustaining the defendants' demurrer and dismissing the bill of complaint of the complainant with costs, which said decree was entered on the 24th day of January, 1895; and whereas the said complainant, Charles Pollock, in order to obtain a reversal of the same, hath obtained the allowance in open court of a petition of appeal to the Supreme Court of the United States:

Now, therefore, if the above-named Charles Pollock shall prosecute his said appeal to effect and if he fail to make his plea good shall answer all damages and costs, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

C. A. SEWARD. [L. S.]
WILLIAM D. GUTHRIE. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of January, 1895, before me—

[NOTARIAL SEAL.]

E. D. O'BRIEN,
Notary Public, New York County.

Approved by—
WM. J. WALLACE,
Circuit Judge.

35 [Endorsed:] United States circuit court, southern district of New York. Charles Pollock *against* The Farmers' Loan & Trust Company *et al.* Supersedeas bond. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

36 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 35, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles Pollock, complainant, *versus* The Farmers' Loan & Trust Company, Samuel Sloan, William Waldorf Astor, William Remsen, Isaac Bell, James Roosevelt, Thomas Rutter, William H. Wisner, Darius O. Mills, Percy R. Pyne, Edward R. Bell, Charles H. Thompson, Henry A. C. Taylor, Robert C. Boyd, Alexander T. Van Nest, James Stillman, Moses Taylor Pyne, Henry Van Rensselaer Kennedy, Edward R. Bacon, Charles L. Colby, Cleveland H. Dodge, Charles A. Peabody, Jr., Henry Hentz, Rosewell G. Rolston, Robert F. Ballantine, James Neilson, and Franklin D. Locke, defendants, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and nineteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 15,777. S. New York C. C. U. S. Term No., 893. Charles Pollock, appellant, *vs.* The Farmers' Loan & Trust Company *et al.* Filed January 28, 1895.

(15,777.)

Supreme Court of the United States.

OCTOBER TERM—1894.

CHARLES POLLOCK,
Appellant,

versus

THE FARMERS' LOAN AND TRUST COMPANY *et al.*,
Appellees.

No. 893.

Argument on behalf of the Appellees.

The Farmers' Loan and Trust Company and its Directors, appellees herein, make the following statement to the Court in this cause.

This is a suit brought by a citizen of Massachusetts against The Farmers' Loan and Trust Company, a New York corporation, and its Directors, in which the plaintiff alleges that he is a stockholder of the defendant Trust Company, having acquired ten shares of its capital stock on or about May 20th, 1892, the value of which shares exceeds five thousand dollars. That he brings the suit in his own name, and in his own behalf as such stockholder, and also as a representative and on behalf of such of the other stockholders, similarly situated and interested, as may choose to intervene. That the Trust Company and its Directors claim that under the Act of Congress entitled "An Act to reduce taxation, to provide revenue for the government, and for other purposes," passed August 15th, 1894, the Trust Company is liable and that they intend to pay to the Federal Government before the first day of July, 1895, a tax of two per centum on the net profits or income of the Trust Company for the year ending December 31st, 1894, above actual operating and business expenses, including the income derived from real estate and bonds of the city of New York, and also a similar tax upon the amount of the income in excess of four thousand dollars of all minors and others for whom the Trust Company is acting in a fiduciary capacity.

The plaintiff further alleges that the provisions of the Income Tax law are unconstitutional and void for certain reasons especially set forth in the bill; that the voluntary compliance by the Trust Company with the provisions of the Income Tax would expose the Trust Company to a multiplicity of suits, not only by and on behalf of its numerous stockholders, but by and on behalf of numerous minors and other persons for whom it acts in a fiduciary capacity, which will work irreparable injury to the business of the company, and involve it in great damage, and subject the Trust Company to liability, all to the irreparable damage of the plaintiff and of other shareholders.

Plaintiff therefore prays that it may be adjudged and decreed, that the provisions known as the Income Tax, incorporated in the Act of August 15th, 1894, are unconstitutional, null and void, that the defendants may be restrained from voluntary compliance therewith, and for other relief.

The defendants interposed a demurrer, which the Court below sustained, and judgment was entered on the demurrer. From that judgment an appeal is taken to this Court.

The Farmers' Loan and Trust Company takes the position that as the income tax is now the law, it is its duty to regard it, and it is proceeding to have returns made up as to its own income, and also as to the income derived from property which it holds as Trustee, Guardian and Executor, in which a large number of people are interested. This work is very laborious and expensive, and many questions of interest requiring legal advice have arisen and will arise. It is, however, of great importance that the legality of this Act should be passed upon and disposed of at an early day, and particularly before it will be necessary for any payments to be made by the Trust Company under its requirements. Many of the beneficiaries interested in the trust estates represented by The Farmers' Loan and Trust Company assert that the law is illegal and invalid, and that the tax should not be paid. If called upon to make payment before its validity is decided upon, the Trust Company will be placed in a position of great embarrassment. Besides this, by reason of the pendency of this action, the Trust Company has notice of the objection of parties interested in it to its payment of a tax, by which payment they will be affected, and it is in a position where, without judicial interpretation of the legality of the law, it is embarrassed as to what its action should be.

The Appellees therefore ask that judgment shall be rendered in this case as to the validity of the law, and as to their duty in the premises, and that such judgment shall be, after a full and careful investigation of all of the facts and of the law, rendered at as early a day as possible.

HERBERT B. TURNER,
Counsel for Appellees.

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Office Supreme Court, U. S.
FILED.
MAR 4 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.—No. 894.

LEWIS H. HYDE,

Appellant,

against

THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK ET AL.,

Appellees.

BRIEF ON BEHALF OF APPELLEES.

JAY & CANDLER,
Solicitors for Appellee, THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK,
48 Wall Street, New York.

The Evening Post Job Printing House, New York.

Supreme Court of the United States.

LEWIS H. HYDE, Appellant, AGAINST THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK *et al.*, Appellees.	In Equity.

BRIEF ON BEHALF OF APPELLEES.

This is an appeal from a decree made at a Stated Term of the Circuit Court of the United States for the Southern District of New York, dated on the 24th day of January, 1895, sustaining a demurrer interposed to the bill of complaint by the Continental Trust Company of the City of New York and others, and dismissing the complaint of the complainant, with costs (fol. 30), an appeal having been allowed directly to this Court (fol. 30).

The cause was commenced by the complainant Lewis H. Hyde against The Continental Trust Company of the City of New York and its trustees for an injunction restraining the said trust company from voluntarily complying with the provisions of that part of an act of Congress passed August 15, 1894, known as the "Income Tax," by making the lists, returns or statements therein referred to, on the ground that the provisions of the said act known as the

"Income Tax" are unconstitutional, null and void (fol. 15).

The complainant in his bill of complaint, after setting forth the incorporation of the defendant, The Continental Trust Company of the City of New York, the amount of its capital stock and surplus, and that by the laws of the State of New York it is required to invest its capital in real estate securities, or in the stocks of the United States or of the State of New York, or in stocks and bonds of incorporated cities and counties of the said State, and the various ways in which the said trust company is authorized to act as transfer agent, trustee, &c., and the amount which it has invested in real estate and bonds of the City of New York, and what its net profit and income was during the year ending December 1, 1894, and that it acted as trustee in certain respects and for certain persons and corporations, and that the other defendants are trustees of the said trust company of which the complainant is a stockholder and non-resident of the State of New York, and that the said trust company and a majority of its trustees, under an act of Congress entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," passed August 15, 1894, being the act above referred to, intend to pay to the Federal Government a tax of 2 per centum on the net profits or income of the said defendant trust company for the calendar year ending December 31, 1894, above actual operating and business expenses, and that a similar tax must be paid upon the amount of the income, gains and profits in excess of four thousand dollars of all minors and others for whom the said trust company is acting in a fiduciary capacity; and that in compliance with the terms of the said act, the said defendant trust company proposes to file with the Collector of Internal Revenue of the Second District of the City of New York a list or return showing the amount of net profits or income received by said

trust company during said calendar year of 1894, and also similar returns showing the amount of income, gains and profits of minors and others for whom the said trust company acts in a fiduciary capacity, alleges,

That the provisions of said "Income Tax" are unconstitutional, null and void in that said tax is a direct tax, in respect to the real estate owned by the defendant trust company in its own right and also in respect to that held by it as trustee by being imposed upon the rents, issues and profits thereof, and is likewise a direct tax in respect to its personal property and that held by it as trustee, in that such tax is not apportioned among the several States as required by § 2 of Article 1 of the Constitution of the United States.

That if the said "Income Tax" is not a direct tax, then it is unconstitutional, in that the tax is not uniform throughout the United States as required by § 8 of Article 1 of the said Constitution.

That said "Income Tax" is not uniform as to property, class or subject in that the net profits or income above actual operating and business expenses of many corporations organized under the laws of various States amounted to less than four thousand dollars during 1894, and that said tax is imposed on such corporations, although individuals carrying on and transacting similar business, under like conditions and having like property and income, are exempted from the payment of said tax.

That said "Income Tax" is not uniform, in that numerous shareholders have incomes of less than $4,000 per annum, and if the defendant trust company shall pay the said tax, the effect will be to lessen the dividends of such shareholders and lessen the values of their shares and compel them to bear and pay said tax, although other parties of the same class similarly situated, whose incomes are less than $4,000 per annum, received from investments in other property of like value, are exempted from the payment of said tax.

That said "Income Tax" is not uniform in that

it is imposed upon only about two per centum of the population of the United States, namely, those who have an income in excess of $4,000 per annum, and that the remaining population, namely, about ninety-eight per centum, is exempted from the said tax, although they hold the greater portion of all property in the United States.

That said "Income Tax" is not uniform in that it imposes a tax upon the value of personal property acquired by gift or inheritance, while no tax is imposed upon the value of real property similarly acquired.

That said "Income Tax" is not uniform in that the principal of every estate consisting of personal property which passes by gift or inheritance to any person during the pendency of said act is taxed at the rate of two per centum upon the amount of such principal, although other like estates which do not pass by gift or inheritance until after such limited period, or which during said period pass by gift or inheritance to corporations, are not so taxed.

That said "Income Tax" is not uniform in that it is not laid at the same rate or percentage upon all incomes derived from like property, values and quantities, but varies according as the property, real or personal, from which it is derived, belongs to an individual, or to more than one individual, or to members of one family.

That said "Income Tax" is not uniform in that salaries due to State, county or municipal officers are exempted from the payment of the income tax, all corporations or associations for charitable, religious, educational or beneficial purposes, and all building or loan associations which loan to their shareholders only, and very many insurance companies and savings institutions, are exempted from the payment of the income tax; and the income from bonds of the United States, the principal and interest of which are by the law of their issuance exempt from Federal taxation, is also exempted from the payment of said income tax.

That said "Income Tax" is not uniform in many other respects, besides those specifically mentioned.

That the provisions of said "Income Tax" are unconstitutional in that they impose a tax upon income not taxable under the Constitution, and likewise upon income derived from stocks and bonds of the States and counties and municipalities therein, which stocks and bonds are among the means employed for carrying on their respective governments, and are not proper subjects of the taxing power of Congress, and which States and their counties and municipalities are independent of the general Government of the United States and the respective stocks or bonds of which are, together with the power of the States to borrow in any form, exempt from Federal taxation. That the stocks and bonds of such States and municipalities thus exempted amount to about $1,243,268,000, on which the income, interest or charge amounts to over the sum of $65,541,000 per annum, and that it was the intention of Congress to lay and collect said tax upon income derived from State, county and municipal stocks and bonds.

That the provisions of said "Income Tax" are unconstitutional as impairing property rights vested prior to the passage of said act, and impose a tax upon incomes of persons, associations and corporations which accrued prior to August 28, 1894 (the date upon which said act became a law), as well as upon property received by gift or inheritance prior to said date.

That the provisions of said "Income Tax" are unconstitutional in that all persons and corporations thereby taxed are deprived of property without due process of law, in violation of Article V. of the Constitution (see Article V. of the *Amendments* to Constitution).

That the provisions of said "Income Tax" are unconstitutional in that all persons or corporations thereby taxed may be compelled to produce and disclose their private books and papers in order to make

them liable for a penalty or forfeit their property, in violation of Articles IV. and V. of the Constitution (see Articles IV. and V. of *Amendments* to Constitution).

The bill of complaint then sets forth that the suit is not a collusive one and that the complainant has requested the defendant trust company to refuse and refrain from paying said tax, and to refrain from voluntarily making said returns, and that said defendant trust company has declined to comply with such request and intends to pay said tax upon all its net profits or income, including therein its rent from real estate and its income from municipal bonds, on the ground that refusal to obey the law would subject it to litigation with the United States, and that failure to pay said income tax would cloud the title to its real estate. That if the defendant and its trustees pay said tax out of the gains, income and profits of said defendant trust company, or out of the gains, income and profits of the property held by it in its fiduciary capacities, they will thereby diminish the assets of said trust company and lessen the dividends thereon and the value of all its shares. That a voluntary compliance with said act will expose the defendant trust company to a multiplicity of suits and subject it to irreparable damage to the injury of complainant and all other shareholders (fols. 1 to 17).

To the said bill of complaint the defendant trust company demurred upon the ground "that the said bill doth not contain any matter of equity wherein this Court can ground any decree or give to the complainant any relief against this defendant, and that it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant (fol. 19). The other defendants also demurred upon similar grounds (fols. 22-25).

The cause having been brought to hearing upon bill and demurrer, a decree was duly entered sus-

taining the demurrer and dismissing the bill, with costs (fol. 29), and from such decree an appeal was allowed directly to this Court (fol. 30) upon the following assignment of errors:

I.—That the Court erred in not holding that so much of the Act of Congress of the United States, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," passed August 15, 1894, as relates to the levying and collection of a tax upon incomes, as specified in Sections 27 to 37, both inclusive, were unconstitutional and void, in that such sections violate Sections 2 and 8 of Article I. and Articles IV. and V. of the Constitution of the United States.

II.—That the Court erred in not granting to the complainant the relief prayed in and by his bill or any part thereof.

III.—That the Court erred in sustaining the demurrer to said bill.

IV.—That the Court erred in dismissing the said bill, with costs (fols. 32, 33).

I.

The Congress has a general power to tax, except in such respects as are prohibited by the Constitution. The only prohibitions are that direct taxes must be apportioned and that duties, imposts and excises must be uniform, and must be levied for the payment of debts and to provide revenue for purposes of government.

When the Constitution was adopted, the several States having supreme power respectively ceded, so

to speak, certain rights to the General or Federal Government, and such rights or powers so ceded or given were embodied in the Constitution; therefore that Government is one of limited jurisdiction, and can only exercise such rights and privileges as is embodied in the Constitution, and any acts which it might do or any law which it might pass that was not within such concessions or embodied within such Constitution would be *ultra vires* and void.

Pacific Insurance Co. *v.* Soule, 74 U. S., 433.

The provisions of the Constitution in respect to taxation are as follows:

"The Congress shall have power: To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

Art. 1, § 8.

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

"No tax or duty shall be laid on articles exported from any State."

Art. 1, § 9.

The enumeration above referred to is contained in Art. 1, § 2, as follows: "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined. * * *"

The only restrictions, therefore, in respect to the right of Congress to tax, are:

(1.) That all *duties, imposts and excises* shall be uniform throughout the United States.

(2.) That no *direct* tax shall be laid unless apportioned.

(3.) That no tax or duty shall be laid on articles exported from any State.

It might also be said that a further restriction is contained, Art. 1, § 8, in that taxes, duties, imposts and excises can only be laid *in order* to pay debts and to provide for the common defense and general welfare of the United States.

Story on Const., § 908.

In discussing the questions raised on this appeal it is only necessary to consider the sections authorizing the laying of taxes, duties, imposts and excises and direct taxes and restrictions 1 and 2 above referred to, as it will doubtless be conceded that no question is raised that the Income Tax Act, so called, levies a tax upon articles exported from any State, or that such taxes as are laid are not to pay debts or to provide for the defense and general welfare of the United States.

Should Congress impose a burden in the nature of a tax that was neither a duty, impost nor excise, or a direct tax, what would be the rule as to the manner of laying the same? Would it not be that Congress has a discretionary power in such a case, as only duties, imposts and excises are to be uniform and only direct taxes are to be apportioned?

Chase, *J.*, in Hylton *v.* United States, 3 Dallas, 171, says: " A general power is given to Congress to lay and collect taxes of every kind and nature, *without any restraint* except only on exports; but two rules are prescribed for their government, namely, uniformity and apportionment. Three kinds of taxes, to wit, duties, imposts and excises by the first rule, and capitation, or other direct taxes by the second rule. I believe some taxes may be both direct and indirect at the same time. If so,

would Congress be prohibited from laying such a tax because it is partly a direct tax?"

In Story on the Constitution, § 951, citing Hylton *v.* United States, *supra*, these words are used: "Here, then, two rules are prescribed, the rule of apportionment (as it is called), for direct taxes, and the rule of uniformity for duties, imposts and excises. If there are any other kinds of taxes not embraced in one or the other of these two classes (and it is certainly difficult to give full effect to the words of the Constitution without supposing them to exist), it would seem that Congress is left at full liberty to levy the same by either rule, or by a mixture of both rules, or perhaps by any other rule not inconsistent with the general purposes of the Constitution."

Briefly stated, then, the Federal Government, by its taxing power, may levy taxes: first, when direct, *proportionately;* second, when a duty, impost or excise, *uniformly;* third, when not included in one of the first two classes *in such discretionary manner as to it may seem proper.*

II.

The income tax is not a *direct tax* within the meaning of the Constitution or in respect to any subject of taxation, or even as to rents, issues and profits of real estate; and not being such a *direct tax,* it is not required to be apportioned among the several States.

The material provisions of the Income Tax Act of August 28, 1894, are as follows:

"§ 27. That from and after the first day of January, eighteen hundred and ninety-five, and until

the first day of January, nineteen hundred, there shall be assessed, levied, collected and paid annually upon the gains, profits and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits or income be derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected and paid annually upon the gains, profits and income from all property owned and of every business, trade or profession carried on in the United States by persons residing without the United States. * * *

"§ 28. That in estimating the gains, profits and income of any person there shall be included all income derived from * * * profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated, * * * and all other gains, profits and income derived from any source whatever. * * *

"§ 32. That there shall be assessed, levied and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness of all * * * trust companies, * * * and all other corporations, companies or associations doing business for profit in the United States * * *."

A tax is specifically imposed by § 27 upon the "rents" over and above four thousand dollars, derived from any kind of property by "every citizen of the United States," but in the case of corporations

the word "rents" is not used, but from the general import and intention of the statute it would be included in the expression "net profits or income."

Assuming, however, that from the foregoing provisions, and from other sections of the statute, that a tax is imposed upon the rents, issues and profits of the real estate owned by the defendant trust company, and the rents, issues and profits of the real estate held by it in a fiduciary capacity, then is such a tax a direct tax within the meaning of the Constitution? We answer it is not.

In respect to the meaning of the term "direct taxes," Chase, *J.*, in Hylton *v.* United States, *supra*, says: "The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress may lay in proportion to the census. * * * I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution are only two, to wit, a capitation or poll tax simply, without regard to property, possession or any other circumstance, and a tax on land. I doubt whether the tax by a general assessment of personal property within the United States is included within the term 'direct tax.'"

This dicta as to what "direct taxes" are within the meaning of the Constitution has by subsequent decisions and opinions of the ablest writers become the settled law, although there are a few suggestions or dicta in the books that certain other taxes *might* be "direct taxes." For instance in Veazie Bank *v.* Fenno, 8 Wallace, 533, Chase, *C. J.*, says: "It may further be taken as established that the words direct taxes, as used in the Constitution, comprehended only capitation taxes and taxes on land and *perhaps* taxes on personal property by general valuation and assessment of the various descriptions possessed within the several States."

And in Scholey *v.* Rew, 23 Wallace, 331, Clifford, *J.*, says it is "not absolutely decided whether direct taxes include any which are not capitation taxes or taxes on land."

Cooley on Taxation at § 6 is of the opinion that a direct tax is one assessed upon the property, person, business, income, &c., of those who pay them, and are indirect when levied upon commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity.

This distinction is not in accordance with the meaning as established by this Court and is not a proper definition of the word "direct" as used in the Constitution.

It may be said, however, that no decision has been found which holds *that there are* other direct taxes than those above referred to.

See Pacific Insurance Co. *v.* Soule, 7 Wallace, 433.

Springer *v.* United States, 102 U. S., 586.

Story on the Constitution, § 955.

In Springer *v.* U. S., *supra*, it was expressly held that capitation taxes and taxes on real estate were the only direct taxes contemplated by the Constitution.

The questions decided in Hylton *vs.* U. S., *supra*, arose under a statute imposing a tax of a fixed amount upon carriages which were kept by persons for their own use or for hire or for the conveyance of passengers, and the Court held that such a tax was not "direct."

In the Veazie Bank *v.* Fenno, *supra*, it was held that a tax upon the amount of notes paid out by a State bank was not a "direct" tax.

As direct taxes then are only capitation taxes and taxes on real estate, are either of the contentions of the complainant on which is based the claim that the tax is unconstitutional as a direct tax well founded?

Those contentions are that the income tax is (1) a direct tax in respect to the real estate held and

owned by the defendant trust company in its own right and in its fiduciary capacity by being imposed upon the rents, issues and profits of real estate, and is (2) likewise a direct tax in respect to its personal property and the personal property held by it in its fiduciary capacities.

As to the first contention. Do the decisions mean that a direct tax is a tax on land in its limited sense merely, or on lands and tenements, or on real property in its broadest sense, including all chattels real, such as shares in corporations created solely for the purpose of holding and making use of its real estate (shares of this character having been held to be real property in Wells *v.* Cowles, 2 Conn, 567, and Price *v.* Price, 6 Dana, 107)?

This question is not material to determine, for the income tax does not assume to tax real estate or chattels real, but merely the income derived therefrom. In the case of rents and such incomes they clearly are personal property, being profits issuing out of lands and tenements corporeal.

It is well established by the following authorities that *accrued rents* are personal property:

Greenleaf's Cruise on Real Prop., 2 Ed., p. 85.
Burden *v.* Thayer, 3 Metcalf, 76, 78.
Williams *v.* Coade, 10 Vesey, Jr., 500.

As to the second contention, that the tax is a direct tax as to personal property, it has already been shown that personal property is not the subject of direct taxation. The only remaining contention is that the tax is a capitation tax, but that question was discussed in Pacific Insurance Co. *v.* Soule, *supra*, and held to be untenable in a case similar to the one made by the record in this cause. It, therefore, follows, that as the tax is not a direct tax within the meaning of the Constitution, it is not necessary that the same should be apportioned, as required in the case of such taxation.

III.

It may well be claimed that the income tax is not a duty, impost or excise, within the meaning of the Constitution, and therefore is not required to be uniform.

What the exact meaning of the words "tax," "duty," "impost" and "excise" is, as used in the Constitution, is certainly a difficult question to determine.

The framers of the Constitution doubtless had in mind a distinction between the words, and although duties, imposts and excises are a species of taxation it cannot be said that all burdens (other than direct taxes) were to be included in one of those three words, for a distinction is made between the manner in which taxes, excluding duties, imposts and excises, are to be laid and the manner in which such duties, imposts and excises are to be levied, as we have attempted to show above.

The word "tax" has a very broad meaning and in its general sense is defined in Story on the Constitution, § 950, to be "all contributions imposed by government upon individuals for the use and service of the State, whether under the name of toll, tribute, tallage, gable, impost, duty, custom, excise, subsidy, aid, supply or other name."

This Court has defined "tax" to be "a pecuniary burden imposed for the support of government" (17 Wallace, 322).

Power was undoubtedly intended to be given to Congress to levy any burden that might be called a tax, so the word may be said to be used in the Constitution in its broadest sense.

Why then, we may ask, were the additional words "duties, imposts and excises" added? Because they are the only burdens to be laid uniformally, and, as Story adds, "to avoid all possibility of doubt in the construction of the clause, since, in com-

mon parlance, the word 'taxes' is sometimes applied in contradistinction to duties, imposts and excises, and, in the delegation of so vital a power, it was desirable to avoid all possible misconception of this sort; and accordingly we find, in the very first draft of the Constitution, these explanatory words were added" (citing Journal of Convention, 220):

The words duties, imposts and excises, as used in § 8 of the Constitution, have a different meaning from the word taxes, mentioned in the same section, and this difference will fully appear from the following quotations.

Story, in discussing the word duty, says: "The word duty has not, perhaps, in all cases a very exact signification, or rather it is used in a larger and sometimes in a narrower sense. In its large sense it is very nearly an equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense it is often used as equivalent to customs, which appellation is usually applied to those taxes which are payable upon goods and merchandize imported or exported, and was probably given on account of the usual and constant demand of them for the use of kings, states and governments; in this sense it is nearly synonymous with 'imposts' which is sometimes used in the large sense of taxes or duties or impositions and sometimes in the more restrained sense of a duty on imported goods and merchandize" (Story Const. Abr., § 474).

The definition of "duty" in Black's Law Dictionary is: "In its most usual signification this word duty is the synonym of imposts or customs; but it is sometimes used in a broader sense, as including all manner of taxes, charges or governmental impositions. It also denotes a tax or impost due to the Government upon the importation or exportation of goods."

In Black's Law Dictionary, speaking of imposts, this appears: "Taxes, duties or impositions; A duty on imported goods or merchandise" (Story, Const., 949).

"Impost is a tax received by the Prince for such merchandises as are brought into any haven within his dominions from foreign nations. It may in some sort be distinguished from customs, because customs are rather that profit the Prince maketh of wares shipped out, yet they are frequently confounded."

"An impost or a duty on imports is a custom or a tax levied on articles brought into a country and is most usually secured before the importer is allowed to exercise his right of ownership over them" (Brown *v.* Maryland, 12 Wheaton, 419).

The following are definitions of the term excise: Excise—An inland imposition upon commodities charged in most cases upon the manufacturer (2 Steph. Com., 579).

A duty or tax laid on certain articles produced and consumed at home (1 Bl. Com., 318).

It includes also the duties on licenses and auction sales (2 Steph. Com., 581).

The meaning of these words is reviewed by this Court in Pacific Ins. Co. *v.* Soule, *supra*, as will appear from the following quotations from that case:

"*Duties* are defined by Tomlin to be things due and recoverable by law. The term, in its widest signification, is hardly less comprehensive than 'taxes.' It is applied, in its most restricted meaning, to customs, and in that sense is nearly the synonym of 'imposts' (citing Tomlins Law Dic. under Duty; Story Const., 952; Hylton *v.* U. S., 3 Dallas, 171). Impost is duty on imported goods and merchandise. In a larger sense it is any tax or imposition (citing Story's Const. Abr., § 474). Cowell says it is distinguished from customs, "because customs is rather the profit which the Prince makes on goods shipped out" (citing Cowell's Interprete, title Impost.) Mr. Madison considers the terms 'duties' and 'imports' in these clauses as synonymous (1

Story Const., 669, note). Judge Tucker thought they were probably intended to comprehend every species of tax or contribution not included under the ordinary terms, 'taxes and excises!'

Excise is defined to be an inland imposition, sometimes upon the consumption of the commodity, and sometimes upon the retail sale; sometimes upon the manufacturer, and sometimes upon the vendor (citing Bateman's Excise Law, 96; 1 Story Const., § 953; 1 Bl. Com., 318; 1 Tucker's Bl. Appendix, 341)."

Pacific Insurance Company *v.* Soule, 7 Wallace, 433-445.

In the speech delivered by Senator Hill in the Senate, as published in the *Congressional Record* of January 11, 1895, he said: "'Duties, imposts and excises' were words in common use in English statutes in 1787. They were referred to in the *Federalist* and by Marshall in the early volumes of Wheaton. All concur that 'imposts' are taxes on arriving foreign articles; that 'duties' are the same; 'excises' are internal taxes on domestic commodities."

Adopting these definitions of the words "duties, imposts and excises," it is manifest that the income tax provided for in the Act of Congress now under consideration is not embraced in either of those three words, but is a tax which Congress has the general power to levy without any restriction either as to apportionment or uniformity as we have attempted to show above.

IV.

Should the Court, however, hold that our third point is not well taken, and that the burden imposed by the income tax is a duty, impost or excise, then such burden is levied uniformly within the meaning of the Constitution, because the tax operates with the same force and effect in every place where the subject of it is found.

Head Money Cases, 112 U. S., 580.
McAunich *v.* R. R. Co., 20 Iowa, 338.
Springer *v.* U. S., 102 U. S., 586.

After referring to the provisions of the United States Constitution, which provide that taxes, &c., shall be uniform, the Court, in the "Head Money Cases," said: "It is objected that the tax * * * is not uniform throughout the United States. The uniformity here prescribed has reference to the various localities in which the tax is intended to operate. * * * The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. * * * Perfect uniformity and perfect equality of taxation, in all the aspects in which the human mind can view it, is a baseless dream, as this Court has said more than once" (Citing State Railroad Tax Cases, 92 U. S., 575–612).

Head Money Cases, 112 U. S., 580–594.

The general scheme of taxation on incomes provided for by the income tax law now under consideration is the same as the scheme of taxation which was established by the income tax acts of Congress in force during the late war, which were upheld as constitutional by this Court.

Springer *v.* U. S., *supra.*

We have now discussed all the questions presented by the appeal in reference to the tax being a direct tax or one not imposed uniformly.

V.

The objection that the income tax is unconstitutional because it taxes income not taxable under the Constitution of the United States and income derived from stocks and bonds of the States, counties and municipalities therein, is untenable.

(*a.*) The incomes which are exempt from Federal taxation are only those which are derived from salaries due to State, county and municipal officers (Collector *v.* Day, 11 Wallace, 113), and all such are expressly exempted from taxation by the last clause of Section 37 of the income tax act under consideration.

(*b.*) There is no force in the objection that the act taxes *income* derived from the stocks and bonds of the States and counties and municipalities therein. The tax is not imposed upon either *stocks or bonds* of a State, county or municipality, when it is levied upon the interest which it pays on stocks or bonds issued by it, but is upon such interest in the hands of the share or bondholder; and this is so as to the interest paid upon stock or bonds of all corporations. The burden falls upon the person receiving the interest or income, as will appear from the following quotation from the opinion of the Court in U. S. *v.* R. R. Co. (17 Wall., 322-327):

"Whether the tax is 5 per cent. on the dividend "or interest, or whether it be 50 per cent., the cor-

"poration is neither richer nor poorer. Whatever "it thus pays to the Government, it by law with- "holds from the creditor. If no tax exists, it pays "7 per cent., or whatever be its rate of interest, to "its creditor in one unbroken sum. If there be a "tax, it pays exactly the same sum to its creditor, "less 5 per cent. thereof, and this 5 per cent. it pays "to the Government. The receivers may be two, "or the receiver may be one, but the payer pays "the same amount in either event. It is no pecun- "iary burden upon the corporation, and no taxation "of the corporation. The burden falls on the cred- "itor. He is the party taxed."

VI.

The objection that the income tax act impairs property rights vested prior to the passage of the Act and for that reason is unconstitutional, is without force.

Locke *v.* New Orleans, 4 Wall., 172.
Stockdale *v.* Ins. Co., 20 Wall., 323, 331, 341.
Railroad Co. *v.* Rose, 95 U. S., 78–80.
Gray *v.* Darlington, 15 Wall., 63–66.

It is true that by Section 9 of the Constitution Congress is prohibited from passing any *ex post facto* law, but no similar provision is contained in the Constitution as to retrospective laws.

This Court has held that that prohibition of the Constitution embraces only such laws as impose or affect penalties or forfeitures and does not include statutes having any other operation.

Sturdy *v.* Jackaway, 71 U. S., 174.

In Locke *v.* New Orleans, *supra*, this Court in construing an act authorizing the imposition of a

certain tax, says: "The unconstitutionality of the act was asserted from its supposed retroactive operation, upon the notion that the prohibition of the Federal Constitution upon the States to pass an *ex post facto* law extended to all retrospective laws. There was nothing in the position taken which entitled it to consideration. * * * In the second place, even if the law had been strictly retrospective, it would not have been within the constitutional inhibition."

In Stockdale *v.* Insurance Co., *supra*, Miller, *J.*, in delivering the opinion of the Court, says: "The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, cannot be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed." And in the dissenting opinion of Strong, *J.*, in the same case, this appears: "Of course I am not to be understood as maintaining that when the declaratory act was passed, Congress had no power to impose a tax upon any income that had been received before that time."

VII.

The objections in the bill to the act because persons and corporations may be deprived of their property without due process of law, and because they may be compelled to produce and disclose their private books and papers in order to make them liable for a penalty or to forfeit their property, in violation of Articles IV. and V. of the Constitution (see Articles IV. and V. of Amendments to the Constitution), cannot avail the appellant.

(*a.*) This Court has decided that Congress in the exercise of its power to lay and collect taxes has power to enforce payment by distraint and sale of real and personal property, and that such distraint and sale is not a taking of property without due process of law.

Springer *v.* U. S., 102 U. S., 586.

(*b.*) The objection in regard to compelling a production and disclosure of books and papers above mentioned is not sufficiently presented by the bill and will not be considered by this Court as a prospective question.

The Court will only determine that question when it actually arises.

VIII.

It therefore follows that the decree appealed from should be affirmed.

Dated March 4, 1895.

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